

DEPARTMENT OF STATE REVENUE

28970061.LOF

LETTER OF FINDINGS NUMBER: 97-0061 CS CONTROLLED SUBSTANCE EXCISE TAX FOR THE TAX PERIOD OF NOVEMBER 27, 1996

NOTICE: Under Indiana Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Liability

Authority: Indiana Code § 6-7-3-5. Indiana Code § 6-8.1-5-1

The taxpayer protests assessment of controlled substance excise tax, because he did not possess the controlled substance.

II. Controlled Substance Excise Tax - Liability

Authority: Indiana Code § 6-7-3-5. *Bailey v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995).

The taxpayer protest assessment of controlled substance excise tax, because he was not arrested or charged for possession of the controlled substance.

III. Controlled Substances Excise Tax - Jeopardy Assessment

Authority: Indiana Code § 6-7-3-13. *Horrall v. Indiana Department of State Revenue*, 49T10-9706-TA-00157 (Ind.Tax, Nov.10, 1997).

The taxpayer protests assessment of controlled substance excise tax because, the tax period listed on the jeopardy assessment was not the date police discovered the marijuana he allegedly possessed.

STATEMENT OF FACTS

On March 17, 1994, police officers of the Metro Drug Task Force, acting on confidential information, executed a search warrant on the residence of the taxpayer. The police discovered approximately two (2) grams of suspected marijuana. The taxpayer and an accomplice agreed to provide the location of a large quantity of marijuana in exchange for immunity from prosecution. Immunity was granted and the police went to the location disclosed by the taxpayer. The location, a self-storage unit leased by the taxpayer, contained fifty-nine bails of suspected marijuana weighing approximately 2,000 pounds. The police seized the suspected marijuana, retained three of the bails for evidence and destroyed the remaining bails. The three remaining bails of suspected marijuana was tested and weighed and was in fact marijuana weighing 45,945.80 grams. The Department issued a jeopardy assessment against the taxpayer on December 2, 1996. The taxpayer timely filed his protest.

I. Controlled Substance Excise Tax Liability

DISCUSSION

In Indiana, the manufacture, possession or delivery of marijuana is taxable.¹ There was no controlled substance excise tax ("CSET") paid on taxpayer's marijuana, so the Department assessed the tax against him and demanded payment. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid². The taxpayer timely protested the tax assessment and now bares the burden of proving that the proposed assessment is wrong.

In support of his protest, the taxpayer stated in hearing that he had no knowledge of the marijuana contained in the storage unit he leased, and that he had sub-leased the unit to another. In fact, the taxpayer states, the county prosecutor granted immunity because he believing taxpayer was innocent. Despite the Department's request, taxpayers failed to provide any evidence to support these assertions. In effect, taxpayer merely contradicts the assessment, therefore; he fails his burden of showing the CSET assessments are wrong by a preponderance of evidence.

FINDING

The Department respectfully denies the taxpayer's protest.

II. Controlled Substance Excise Tax - Liability

DISCUSSION

Because taxpayer was not arrested or charged for possession or delivery of the marijuana, he now contends that he is not liable for the CSET. In support of this contention, the taxpayer sites the provisions of Indiana § 6-7-3-5³, and

¹ Indiana Code § 6-7-3-5

² Ind. Code § 6-8.1-5-1

that the phrase "in violation of Indiana Code § 35-48-4 or 21 U.S.C. 841 through 21 U.S.C.852..." requires arrest or prosecution. Taxpayer's position is untenable. Our Supreme Court, in *Bailey*⁴, *supra*, stated, that it is the delivery, possession or manufacture of a controlled substances that triggers the CSET. Therefore, the mere fact that taxpayer possessed the controlled substances is a sufficient basis for imposition of the CSET.

FINDING

The Department respectfully denies the taxpayer's protest.

III. Controlled Substances Excise Tax - Jeopardy Assessment.

DISCUSSION

Finally, taxpayer argues that the notice of proposed assessment is fatally defective because the tax period for the proposed assessment is November 27, 1996, a date some eighteen months after the police seized the marijuana from the storage unit taxpayer leased. The Indiana Tax Court has recently put this issue to rest. The court held that the notice of proposed assessment fulfills various functions, and is an important procedural device; therefore, a slight factual error in the notice of proposed assessment does not affect the substantive question of tax liability.⁵

FINDING

The Department respectfully denies the taxpayer's protest.

³ The controlled substance excise tax is imposed on controlled substances that are:

delivered;
possessed; or
manufactured;

in Indiana in violation of Indiana Code § 35-48-4 or 21 U.S.C. 841 through 21 U.S.C.852. The tax does not apply to a controlled substance that is distributed, manufactures, or dispensed by a person registered under IC 35-48-3.

⁴ *Baily v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995).

⁵ *Horrall v. Indiana Department of State Revenue*, 49T10-9706-TA-00157 slip op. At 5- 6 (Ind.Tax, Nov.10, 1997).